

EVERETT V. COHOE

IBLA 82-76

Decided December 4, 1981

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. A MC 18574 through A MC 18576.

Affirmed, as modified.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

APPEARANCES: Everett V. Cohoe, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Everett V. Cohoe appeals the October 13, 1981, decision of the Arizona State Office, Bureau of Land Management (BLM), which declared the unpatented Jewel Ann Nos. 1, 2, and 3 lode mining claims, A MC 18574 through A MC 18576, null and void because no proof of labor or notice of intention to hold the claims had been filed with BLM on or before October 22, 1979, as required by 43 CFR 3833.2-1(a).

The subject claims were located in August 1964, and as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), copies of the notices of location were filed with BLM December 28, 1977.

Section 314 of FLPMA requires the owner of an unpatented mining claim located on or before October 21, 1976, in addition to recording a copy of the official record of the notice of location with BLM, to file evidence of assessment work performed on the claim with BLM on or before October 22, 1979, and before December 31 of each calendar

year thereafter. FLPMA also provides that failure to file timely any instrument required for the recordation of mining claims shall be deemed conclusively to constitute an abandonment of the claim by the owner. This Board has held that filing of a proof of labor in an earlier year than 1979 for pre-FLPMA claims triggers the annual requirement thereafter. Harvey A. Clifton, 60 IBLA 29 (1981). A filing in 1979 would have been necessary in any event.

In the case record transmitted to the Board there is a proof of labor for 1978 bearing a date stamp "1978 OCT 24 AM 11 05.1," but without any identification of the office which impressed the stamp on the document. Appellant asserts that he did file his 1978 proof of labor with BLM on October 24, 1978.

Assuming that appellant did file his proof of labor in 1978, and that the stamped copy in the file was received by BLM October 24, 1978, appellant thereupon was required under FLPMA to file a proof of labor on or before December 30 of each year thereafter, or suffer the consequences set forth in FLPMA.

The record does not reflect that any proof of labor or notice of intention to hold the claims was filed with BLM during the calendar year 1979. The claims were then in default of the requirements of FLPMA, and were properly declared abandoned and void. The BLM decision is modified to reflect that failure to file proof of assessment work on or before December 30, 1979, instead of October 22, 1979, mandates the holding that the claims are conclusively deemed to be abandoned.

Appellant may wish to consult with BLM about the possibility of relocating these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed, as modified.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

